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July 12, 2017

Rob Rutherford  
General Manager  
Southern Recycling LLC  
1840 Linder Industrial Drive  
Nashville, TN 37209

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

RE: Southern Recycling LLC  
Tennessee Multi-sector Stormwater General Permit No: TNR05-6650

Dear Mr. Rutherford,

Tennessee Riverkeeper, Inc. intends to file a lawsuit under section 505 of the Federal Water Pollution Control Act, also known as the Clean Water Act ("CWA"), 33 U.S.C. 1365(a)(1), against Southern Recycling LLC, ("Southern"), located at Nashville, Davidson County, Tennessee, for violations of the CWA, and the regulations thereunder, as more fully referenced below. Tennessee Riverkeeper provides this written notice pursuant to section 135 of Title 40 of the Code of Federal Regulations.

Southern is in violation of sections 301 and 402 of the CWA (33 U.S.C. §§1311 and 1342) and sections 122.1 *et seq* of Title 40 of the Code of Federal Regulations. These laws require that no facility shall discharge pollutants to waters of the United States or waters of the state except as authorized by a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES). See also, T.C.A. §§ 69-3-101 *et seq.* and Tenn. Comp. R. & Regs. 0400-40-05-.07.

Southern was issued approval to operate under Tennessee Multi-sector Stormwater General NPDES Permit No: TNR05-6650 ("Permit") which authorizes it to discharge stormwater associated with industrial activity from various designated outfalls into Cheatham Reservoir, subject to certain effluent limitations, monitoring requirements, and other conditions set forth therein. The Notice of Coverage issued by the Tennessee Department of Environmental Compliance ("TDEC") on June 4, 2015, informed Southern that they were authorized to discharge to receiving waters, Cheatham Reservoir, which is designated Exceptional Tennessee Waters and subject to the requirements found in Section 4.6 of the permit.

A permit holder must comply with all conditions of the permit and any permit noncompliance constitutes a violation of the CWA and/or the Tennessee Water Quality Control Act ("TWQCA") and is grounds for enforcement action. See, Permit, §7.1.1. Any person who violates an effluent standard or limitation or a water quality standard established under T.C.A. 69-3-1011, *et seq.*, violates the terms or conditions of the permit, fails to complete a filing requirement, or violates any other provision of T.C.A. 69-3-1011, *et seq.*, or any rule or regulation promulgated by the board, is subject to a civil penalty. See, Permit, §7.1.2.

A permit holder must at all times properly operate and maintain all facilities and systems of treatment and control (and related equipment) that are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of Storm Water Pollution Prevention Plans ("SWPPP").

The permit establishes benchmarks for each permitted outfall, which are guidelines for facilities to measure against their storm water monitoring results, so that if their sample results are above the established benchmark values they will know to implement (additional) BMPs and modify their SWPPP to bring the results below the established value.

A permit holder must develop a SWPPP for each facility. The SWPPP must identify potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with industrial activity from the facility. In addition, the SWPPP must describe and ensure the implementation of practices that are to be used to minimize the pollutants in stormwater discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of the permit. The term 'minimize' means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice. Facilities must implement the provisions of the SWPPP required under this part as a condition of this permit. *See*, Permit § 4.

The SWPPP must contain a certification that the discharge has been tested or evaluated for the presence of non-stormwater discharges. Sources of non-stormwater that are combined with stormwater discharges associated with industrial activity must be identified in the plan. The plan must identify and ensure the implementation of appropriate pollution prevention measures for the non-stormwater component(s) of the discharge. Any non-stormwater discharges that are not permitted under an individual NPDES permit should be brought to the attention of the division's local Environmental Field Office ("EFO"). *See*, Permit, Sector N, §3.2.3.11.

The permittee is required to amend the stormwater pollution prevention plan (SWPPP) annually or as follows: whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to the waters of the state; if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under subpart 4.4 (Contents of the Plan) of the permit; or if the SWPPP proves to be ineffective in otherwise achieving the general objectives of controlling pollutants in stormwater discharges associated with industrial activity.

In addition, the permittee must evaluate the results obtained from sampling and monitoring pursuant to the Monitoring and Reporting Requirements applicable to its permit. The evaluation should be done following the required annual sampling events to determine whether the facility is below, meets, or exceeds the monitoring benchmarks for that particular industry. If the results of annual stormwater runoff monitoring demonstrate that the facility has exceeded the benchmark(s), the permittee must inform the division's local EFO in writing, within 30 days from the time stormwater monitoring results were received, describing the likely cause of the exceedance(s). Furthermore, within 60 days from the time stormwater monitoring results were received, the facility must review its SWPPP, make any modifications or additions to the SWPPP which



would assist in reducing specific effluent concentrations which are equal to less than the monitoring benchmarks for that facility, and submit to the division's local EFO a brief summary of the proposed SWPPP modifications (including a timetable for implementation).

Permit holders discharging into Exceptional Tennessee Waters have additional SWPPP requirements. The SWPPP for these facilities must be submitted to the appropriate EFO. The permittee is required to conduct, at a minimum, monthly inspections. Any inadequate control measures or control measures in disrepair must be replaced or modified, or repaired as necessary, before the next rain, if possible, but in no case more than seven days after identified. Based on the results of the inspection, the facility description and pollution prevention measures identified in the SWPPP must be revised as appropriate, within 14 days, and changes implemented within 60 days. Inspections must be documented. The permittee must certify on a quarterly basis that inspections of structural and nonstructural control measures and of outfall points were performed and whether or not all planned and designed pollution prevention control measures are installed and in working order.

The Permit allows discharges composed entirely of stormwater, with a few stated exceptions. Discharges of material other than stormwater must be in compliance with an NPDES permit (other than this one) issued for that discharge. *See*, Permit §3.1. It is unlawful to discharge sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters, except in accordance with the conditions of a valid permit. T.C.A. §69-3-108(b).

On or about March 23, 2017 Southern filed its annual storm water monitoring report for 2016 of samples taken on December 4 and 6, 2016. It showed monitoring results as follows:

Pollutants of Concern	Benchmark [mg/L]	Outfall 01	Outfall 02	Outfall 04
Chemical Oxygen Demand (COD)	120	142	86.2	31.8
Total Suspended Solids (TSS)	150	14	50.8	19.7
PCBs, total	Report			
Total Recoverable Aluminum	0.75	ND	1.10	0.21
Total Recoverable Copper	0.018	0.022	0.234	0.072
Total Recoverable Iron	5	0.82	4.41	0.84
Total Recoverable Lead	0.156	0.015	0.085	0.013
Total Recoverable Zinc	0.395	0.447	0.915	0.151

Southern exceeded its permit benchmarks for Chemical Oxygen Demand at Outfall 01, Total Recoverable Aluminum at Outfall 02, Total Recoverable Copper at Outfalls 01, 02 and 04, and Total Recoverable Zinc at Outfalls 01 and 02.

On information and belief, Southern has not informed the division's local Environmental Field Office (EFO) in writing, within 30 days from the time stormwater monitoring results were received, describing the likely cause of the exceedance(s), as required by the above stated permit provisions.

On information and belief, Southern has not, within 60 days from the time stormwater monitoring results were received, reviewed its SWPPP, made any modifications or additions to the SWPPP which would assist in reducing specific effluent concentrations which are equal to less than the monitoring benchmarks for that facility, and submitted to the division's local EFO a brief summary of the proposed SWPPP modifications (including a timetable for implementation), as required by the above stated permit provisions.

On information and belief, Southern has not taken corrective actions as required by the Permit.

Southern's annual storm water monitoring report was signed by Rob Rutherford, Southern's general manager, who, on information and belief, is not an appropriate signatory. *See*, Permit § 7.7.2.

On June 7 and June 23, 2017 Tennessee Riverkeeper conducted sampling of water discharged from Southern's facility at or near Linder Industrial Drive. The laboratory analysis of the samples is as follows:

Pollutants of Concern	Permit Benchmark [mg/L]	7-Jun-17	23-Jun-17
Chemical Oxygen Demand (COD)	120	158	122
Total Suspended Solids (TSS)	150	2750	2150
PCBs, total	Report		
Total Recoverable Aluminum	0.75	16.1	13.8
Total Recoverable Copper	0.018	0.562	0.309
Total Recoverable Iron	5	41.0	43.1
Total Recoverable Lead	0.156	1.83	1.40
Total Recoverable Zinc	0.395	15.1	13.8

These samples were taken of the discharge from Outfalls 01 and/or 02 and greatly exceeded the permit benchmarks for every parameter.

Water was observed running from Southern's facility down and into a storm drain on Linder Industrial Drive on a dry day, the first day of our sampling, on which there should have been no stormwater discharge. On information and belief, the discharge on Linder Industrial Drive (believed to be stormwater Outfall 02) is not a permitted outfall for non-stormwater. On information and belief, Southern is discharging non-stormwater or non-stormwater mixed with stormwater. Such discharge is prohibited by the Permit unless authorized by a separate NPDES permit for that discharge. On information and belief, Southern does not have a NPDES permit to authorize this discharge.



On information and belief, Southern has not filed a copy of its SWPPP with the local EFO, as required for facilities discharging to Exceptional Tennessee waters. It is unknown whether Southern has conducted monthly inspections, documented and kept with the SWPPP, and quarterly certifications that inspections were performed, as required for facilities discharging to Exceptional Tennessee waters.

Southern's discharge was observed to contain floating material in violation of their permit.

Southern's Notice of Intent filed on May 7, 2015 to obtain the Permit was signed by Michael Cook, Southern's yard manager, who, on information and belief, is not an appropriate signatory. *See*, Permit § 7.7.

Southern Recycling, LLC is in violation of its permit, the Tennessee Water Quality Control Act, and the Federal Clean Water Act as set out above. Southern is permitted to discharge into waters of the United States, namely, Cheatham Reservoir of the Cumberland River within the jurisdiction of the Clean Water Act.

Outfalls 01 and 02, which Tennessee Riverkeeper sampled and observed, flow into a tributary of Richland Creek, which is not authorized under the general permit coverage. These discharges are also to waters of the United States within the jurisdiction of the Clean Water Act.

The operational failures and discharges referenced above demonstrate a continuing pattern of pollution at Southern which likely degrades and threatens waters of the United States in violation of the CWA and state law. Tennessee Riverkeeper intends to prosecute these and similar or related violations in the appropriate judicial forum, including all violations which occur or continue after service of this notice and all violations revealed in the course of the litigation discovery process.

Tennessee Riverkeeper intends to file suit against Southern, in federal district court after sixty (60) days from the date of this notice. Tennessee Riverkeeper will request, among other things, a judgment declaring the discharges and violations described or listed herein to be illegal. Tennessee Riverkeeper will also seek an injunction prohibiting Southern from discharging pollutants and from operating in violation of the CWA and state law. Tennessee Riverkeeper will endeavor to have Southern enjoined from engaging in the operation of a recycling facility if the cessation of operations is necessary to achieve compliance.

Additionally, Tennessee Riverkeeper will seek the imposition of civil penalties. The maximum fine or penalty, not including attorney fees and other costs, that could be imposed against the Southern if the case goes to court is \$37,500.00 (thirty-seven thousand, five hundred dollars) per violation, *see*, 40 CFR 19.

The person giving notice is Tennessee Riverkeeper, Inc., P.O. Box 2594, Decatur, AL 35602. The attorney for Tennessee Riverkeeper in this matter, to whom all correspondence should be directed, is Mark E. Martin, Attorney at Law, LLC, Post Office Box 1486, Oneonta, Alabama 35121, telephone (205) 516-9350.

Tennessee Riverkeeper is prepared to discuss the issues raised in this letter at any time and encourages an open dialogue on these matters with the goal of reaching a mutually amicable resolution in lieu of litigation. Thank you for your attention to this matter.

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Tennessee Riverkeeper, Inc.  
Southern Recycling, Inc.  
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Sincerely,



Mark E. Martin

cc:

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